

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 11, 2003

TO: PARTIES OF RECORD IN INVESTIGATION 00-04-006

This proceeding was filed on April 6, 2000, and is assigned to Commissioner Wood and Administrative Law Judge (ALJ) Walker. This is the decision of the Presiding Officer, ALJ Walker.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 8.2 of the Commission's Rules of Practice and Procedure.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

I.00-04-006 ALJ/GEW/POD/tcg

Attachment

PRESIDING OFFICER'S DECISION (Mailed 6/11/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the Operations and Practices of
ITT Powercom, a Registered Non-Utility Electric
Services Provider No. 1115, Doing Business
within California as a Sole Proprietorship, and of
the Sole Proprietor/Owner Michael Huang
(aliases, "Kevin Tan" or "Alex Lee"),

Investigation 00-04-006
(Filed April 6, 2000)

Respondents.

John L. Aoys, for Respondents ITT Powercom
and Michael Huang.
Cleveland Lee, Attorney at Law, for Consumer
Services Division.

ORDER REVOKING REGISTRATION

This order formally revokes the registration of ITT Powercom, an Electrical Service Provider (ESP) registered in the name of a minor but operated in fact until the year 2000 by the minor's father, Michael Huang. This order further prohibits ITT Powercom and Huang from obtaining certification or authority from this Commission for a period of at least five years, and then only upon a showing of fitness to provide service. As a practical matter, we will not impose a monetary penalty in this case because Huang has been placed under supervision of the U.S. Immigration and Naturalization Service (INS) pending deportation to Taiwan.

1. Background

The Commission investigated ITT Powercom and Huang based on allegations that Huang had fraudulently obtained registration as an ESP and had accepted fees from numerous customers without providing them with promised service. The initiating order also recited allegations that respondents had disregarded or evaded requests for information by the Commission's staff.

Evidentiary hearings were conducted in Los Angeles on July 17 and 18, 2000, and on October 5, 2000. The matter was stayed pending INS deportation proceedings against Huang. Following further discovery related to customer refunds, briefs were filed on or about May 17, 2001. Pursuant to Pub. Util. Code § 1701.2(d), the Commission on March 27, 2001, issued an order extending the 12-month statutory deadline for resolution of this case.

2. Evidence at Hearing

The Commission heard five witnesses, including Huang's daughter, two customers of ITT Powercom and the Commission's investigator, Special Agent Richard Chan of the Consumer Services Division (CSD).¹ Huang took the stand in his own defense. The evidence disclosed the following facts, all of which were admitted by Huang:

- Huang in September 1997 and June 1998 caused an ESP application and its amendment to be filed with the Commission in the name of his daughter, who then was a 16-year-old minor and ineligible to operate an ESP. Huang in fact operated and marketed the ESP services.
- Huang in April 1989 had been convicted on federal felony charges of interstate mail fraud and interstate transportation of funds used in a fraud and placed on probation and supervised

¹ CSD later was reorganized as the Consumer Protection and Safety Division.

relief. Disclosure of a felony conviction is required in an ESP application and was not disclosed in this case.

- Huang used various aliases and titles in conducting ESP business, holding himself out in various executed service agreements to be “Kevin Tan” and “executive director” of ITT Powercom.
- Operating primarily in a Chinese community, Huang collected deposits of from \$35 to \$65 from approximately 168 customers with a promise of a 10% reduction in their electricity bills, a promise that was never fulfilled. Additionally, he collected fees of \$398 and \$698 from certain customers in exchange for training them to operate as telephone service resellers or as ESPs.

CSD also alleged that Huang operated a pyramid scheme in which he provided incentives for certain customers to recruit others to pay fees for promised reductions in electricity and telephone bills. Huang denied that his incentive offers were fraudulent.

In his defense, Huang testified that his daughter had asked him to help her establish her own business and that he had done so without realizing that her age made her legally ineligible to execute contracts.² He testified that his failure to provide electricity service to customers was based on Commission-imposed ESP requirements (including a \$25,000 cash security deposit) in Decision 98-03-072 that he was unable to meet, and that he had made refunds to all customers who had signed up for his services. He refused to refund the more substantial training fees, offering evidence to show that the training was legitimate and was offered on a non-refundable basis.

² See Transcript, Volume 3, pages 301-334.

Following the hearing on October 5, 2000, Huang was taken into custody by the INS based on an outstanding warrant. Staff later supplied information showing that Huang remained in custody until April 2001, when he was provisionally released under an Order of Supervision that requires him to report regularly to the INS while arrangements were completed for his deportation to Taiwan under an INS Warrant of Removal/Deportation.

In a letter dated June 3, 2001, Huang's representative³ reported that ITT Powercom and Huang had ceased doing business as an ESP in mid-year 2000 and their offices were closed in December 2000.

3. Discussion

By their own admissions, Huang and ITT Powercom have violated Rule 1 of the Commission's Rules of Practice and Procedure.⁴ There is no question that, in forming an ESP in the name of his minor daughter, Huang sought to mislead the Commission and evade the law. At hearing, Huang exhibited considerable knowledge of the Public Utilities Code, and it seems likely that he knew that his past felony conviction for fraud would make registration in his own name difficult. While the Commission does not necessarily deny registration because of a prior conviction, notice of the conviction can lead to further investigation by Commission staff. (*See, Re Dwayne Porter dba D.L. Porter Corporation* (1998) 78 CPUC2d 545.)

³ Huang was represented at hearing by John L. Aoys, who is not an attorney.

⁴ Rule 1 (Code of Ethics) states: "Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

CSD also alleges violation of Pub. Util. Code § 394.25(b)(4) for misrepresentation of a material fact in obtaining a registration. There is no showing, however, that this statute can be applied retroactively. Since the statute did not become effective until September 30, 2000 (*see* Stats 2000 ch. 1050 § 3 (SB 1194), ch. 1051 § 3 (AB 995)), and the misrepresentations alleged here occurred in 1997 and 1998, we do not hold that this provision of the Code was violated.

CSD also has stipulated that refunds of customer deposits were made to 159 of the 168 customers of ITT Powercom, and that no records exist to account for the remaining 9 customers. Moreover, CSD does not seek reimbursement of the training fees charged by Huang, stating that these fees are a matter of contractual interpretation more appropriately resolved in civil court. (CSD Brief, at 10.)

Nevertheless, the violation of Rule 1 is clear, and it warrants a penalty. CSD recommends that the ESP registrations of ITT Powercom be revoked, and that ITT Powercom and Huang be prohibited from reapplying for or obtaining any Commission authority, registration or permit for the succeeding five years beginning with the effective date of this order. We agree that such a sanction is warranted, and we impose it today.

We decline CSD's recommendation to also impose a monetary penalty. Refunds of customer deposits have been made to virtually all customers of ITT Powercom, and there is no outstanding claim of a deposit refund due. Huang has ceased operating this business and by our order today is barred from any Commission-authorized activity for at least the next five years. As a practical matter, imposition of a fine would probably be meaningless since Huang either has been or will be deported to Taiwan under an INS order.

4. Conclusion

Based on the evidence as a whole, we find that ITT Powercom and Huang have violated Rule 1 in that they misled the Commission in obtaining registration to operate as an ESP and failed to reveal material information as to the felony conviction of Huang.

5. Scope of Proceeding

In its Order Instituting Investigation and Order to Show Cause dated April 6, 2000, the Commission categorized this proceeding as adjudicatory and required that hearings be held.

6. Scope and Presiding Officer

The scope of this proceeding is set forth in the Order Instituting Investigation. We confirm that Administrative Law Judge (ALJ) A. Kirk McKenzie was the presiding officer, and the matter was reassigned this year to ALJ Glen Walker.

7. Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner in this proceeding, and Glen Walker is the assigned ALJ.

Findings of Fact

1. Huang in 1997 and 1998 caused an ESP application and amendment to be filed in the name of his daughter, then a 16-year-old minor ineligible to operate an ESP.
2. Huang operated and marketed the ESP services of ITT Powercom.
3. Huang in April 1989 had been convicted on federal felony charges.
4. Disclosure of a felony conviction is required in an ESP application and was not disclosed in this case.

5. Huang has refunded deposits ranging from \$35 to \$65 to at least 159 of 168 customers, and there are no outstanding claims for refund of deposits.

6. Huang has been placed under an Order of Supervision by the INS and is subject to deportation to Taiwan under an INS Warrant of Removal/Deportation.

Conclusions of Law

1. Huang and ITT Powercom have violated Rule 1 of the Rules of Practice and Procedure by misleading the Commission in the filing of an ESP application.

2. Since the violations here preceded the effective date of Pub. Util. Code § 394.25(b)(4), no finding should be reached as to the alleged violations of this statute.

3. The ESP registration of ITT Powercom should be revoked.

4. ITT Powercom and Huang should be prohibited from reapplying for or obtaining any Commission authority, registration or permit for five years, beginning with the effective date of this order.

5. Today's Order should be made effective immediately.

IT IS ORDERED that:

1. The registration of ITT Powercom as an Electrical Service Provider is revoked.

2. ITT Powercom and Michael Huang are prohibited from reapplying for or obtaining any Commission authority, registration or permit for five years from the effective date of this order, and, after that date, may reapply and obtain authority only upon a showing of fitness to provide service.

3. Order Instituting Investigation and Order to Show Cause 00-04-006 is closed.

4. This Order is effective immediately.

I.00-04-006 ALJ/GEW/POD/tcg

Dated _____, at San Francisco, California.